

## BILL ANALYSIS

Senate Research Center

S.B. 1067  
By: Whitmire  
Criminal Justice  
8-11-93  
Enrolled

### BACKGROUND

This legislation rewrites the Texas Penal Code, and includes the identification of offenses in a new classification of "state jail felony." The new classification is intended to identify the lowest level felony offenders for a new punishment system, while reserving the most expensive punishment resource - state prison beds - for increased incarceration of the most dangerous felons.

This legislation also attempts to ensure more meaningful punishment for the state jail felons, by keeping them within the probation/community corrections net, under judicial control. The concept of sentencing to community corrections gives the district judge more control over the offender.

### PURPOSE

As enrolled, S.B. 1067 creates a fourth classification of felony - state jail felony - and reduces the degree of several felony offenses to accommodate this fourth felony classification.

### RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is granted to the Texas Commission on Alcohol and Drug Abuse under SECTION 4.01 (Section 13(j), Article 42.12, Code of Criminal Procedure) of this bill.

### SECTION BY SECTION ANALYSIS

#### ARTICLE 1

SECTION 1.01. Amends the Penal Code, as follows:

##### TITLE 1. INTRODUCTORY PROVISIONS

##### CHAPTER 1. GENERAL PROVISIONS

Sec. 1.02. OBJECTIVES OF CODE. Adds that it is an objective of the code to limit the exercise of official discretion in law enforcement to prevent oppressive treatment of persons suspected of offenses.

Sec. 1.03. Makes conforming changes.

Sec. 1.05. Makes a nonsubstantive change.

Sec. 1.07. DEFINITIONS. Replaces the definition of "suspect" with "actor," and adds the definitions of "alcoholic beverage," "coercion," "controlled substance," "correctional facility," "dangerous drug," "drug," "electric generating plant," "electric utility substation," "institutional division," "official proceeding," "penal institution," and "secure correctional facility." Deletes the existing definitions of "electric generating plant," "electric utility substation," and "participant in a court proceeding."

##### CHAPTER 3. MULTIPLE PROSECUTIONS

Makes conforming changes.

## TITLE 2. GENERAL PRINCIPLES OF CRIMINAL RESPONSIBILITY

### CHAPTER 6. CULPABILITY GENERALLY

Makes conforming changes.

### CHAPTER 7. CRIMINAL RESPONSIBILITY FOR CONDUCT OF ANOTHER

Makes conforming changes.

### CHAPTER 8. GENERAL DEFENSES TO CRIMINAL RESPONSIBILITY

Makes conforming changes.

### CHAPTER 9. JUSTIFICATION EXCLUDING CRIMINAL RESPONSIBILITY

Sec. 9.01. DEFINITIONS. Redefines "escape."

Sec. 9.21. Provides that the use of force in self-defense is not justified if the actor sought an explanation from or discussion with the other person concerning the actor's differences with the other person while the actor was carrying a weapon in violation of Section 46.02.

Secs. 9.22, 9.31, 9.32, 9.33, 9.42, 9.44, 9.51, 9.52, and 9.53. Make conforming and nonsubstantive changes.

## TITLE 3. PUNISHMENTS

### CHAPTER 12. PUNISHMENTS

Sec. 12.01. Makes a nonsubstantive change.

Sec. 12.04. CLASSIFICATION OF FELONIES. (a) Adds state jail felony as a fifth class of felony.

(b) Provides that a felony without specification as to category is a state jail felony.

Secs. 12.21, 12.22, 12.31, 12.32, and 12.33. Make conforming changes.

Sec. 12.34. THIRD DEGREE FELONY PUNISHMENT. Deletes language that currently makes it an option for a third degree felon to be punished by confinement in a community correctional facility for up to one year.

Sec. 12.35. STATE JAIL FELONY PUNISHMENT. (a) Requires a person guilty of a state jail felony to be punished by confinement in a state jail for a term of not more than two years or less than 180 days.

(b) Authorizes the additional punishment of such a felon by a fine of up to \$10,000.

(c) Sets forth conditions under which a state jail felon is required to be punished for a third degree felony.

Sec. 12.41. Makes a conforming change.

Sec. 12.42. PENALTIES FOR REPEAT AND HABITUAL FELONY OFFENDERS. Requires a defendant on trial for a state jail felony with a prior felony conviction to be punished for a second degree felony on conviction. Authorizes the use of a previous conviction for a state jail felony for enhancement purposes under this section only if the defendant was punished for the offense under Section 12.35(c).

Deletes existing Section 12.422 (Imposition of Substance Abuse Felony Punishment).

Sec. 12.43. PENALTIES FOR REPEAT AND HABITUAL MISDEMEANOR OFFENDERS. Makes nonsubstantive changes in Subsections (a) and (b), and adds Subsection (c), to provide that if the punishment scheme for an offense contains a specific enhancement provision increasing punishment for a defendant who has previously been convicted of the offense, the specific enhancement provision controls over this section.

Sec.12.44. New title: REDUCTION OF THIRD DEGREE OR STATE JAIL FELONY PUNISHMENT TO MISDEMEANOR PUNISHMENT. Authorizes a court to punish a defendant who is convicted of a third degree felony by imposing the confinement permissible as punishment for a Class A misdemeanor, a fine not to exceed \$10,000, or both fine and confinement, or to punish a defendant who is convicted of a state jail felony by imposing the confinement for a Class B misdemeanor, a fine not to exceed \$10,000, or both.

Deletes existing Subsection 12.47 (Penalty if Crime Committed Against Child During Ritual or Ceremony).

Sec. 12.51. Makes conforming changes.

#### TITLE 4. INCHOATE OFFENSES

##### CHAPTER 15. PREPARATORY OFFENSES

Secs. 15.01, 15.02, and 15.04. Make conforming changes.

##### CHAPTER 16. CRIMINAL INSTRUMENTS AND INTERCEPTION OF WIRE OR ORAL COMMUNICATION

Sec. 16.01. UNLAWFUL USE OF CRIMINAL INSTRUMENT. Reduces the offense of manufacturing, adapting, selling, installing, or setting up a criminal instrument from a third degree felony to a state jail felony.

Sec. 16.02. UNLAWFUL INTERCEPTION, USE, OR DISCLOSURE OF WIRE, ORAL, OR ELECTRONIC COMMUNICATIONS. Makes the offense of intentionally manufacturing, assembling, possessing, or selling a device for nonconsensual interception of communications a state jail felony. Deletes language relating to the forfeiture and disposition of seized property. Makes the offense of obstructing an authorized interception of communications a state jail felony, and provides that this section expires September 1, 2005.

Deletes existing Sec. 16.021 (ILLEGAL INTERCEPTION).

Sec. 16.03. UNLAWFUL USE OF PEN REGISTER OR TRAP AND TRACE DEVICE. Reduces the offense of knowingly installing or using a pen register or trap and trace device to record dialed telephone numbers from a third degree felony to a state jail felony. Adds a definition of "communications common carrier." Deletes language relating to the seizure and forfeiture of property used in such an offense.

Sec. 16.04. UNLAWFUL ACCESS TO STORED COMMUNICATIONS. Makes the offense of obtaining, altering, or preventing authorized access to communication while the communication is in electronic storage for the purpose of obtaining a benefit or harming another a state jail felony, rather than a third degree felony. Deletes language authorizing the imposition of fines.

Sec. 16.05. ILLEGAL DIVULGENCE OF PUBLIC COMMUNICATIONS. Makes the illegal divulgence of public communications a state jail felony. Provides that such an offense if committed for a tortious or illegal purpose or to gain a benefit is a Class C misdemeanor if the communication is the radio portion of a cellular telephone communication, a public and mobile radio service or communication or a paging service communication.

#### TITLE 5. OFFENSES AGAINST THE PERSON

## CHAPTER 19. CRIMINAL HOMICIDE

Sec. 19.02. MURDER. Adds the definitions of "adequate cause," and "sudden passion." Allows a defendant, at the punishment stage of a trial, to raise the issue as to whether he caused the death under the immediate influence of sudden passion arising from an adequate cause, and if proven makes the offense a second degree felony.

Sec. 19.03. CAPITAL MURDER. Adds to the list of offenses a person, while incarcerated, in a penal institution, murders another with the intent to establish, maintain, or participate in a combination or in the profits of a combination; a person while incarcerated for an offense under this section or Section 19.02, murders another, or while serving a sentence of life imprisonment or a term of 99 years for an offense under Section 20.04, 22.021, or 29.03, murders another; or a person murders an individual under six years of age.

Sec. 19.04. MANSLAUGHTER. Makes it an offense for a person to recklessly cause the death of another, and makes such an offense a second degree felony. Deletes existing language relating to voluntary and involuntary manslaughter.

Deletes existing Sec. 19.06 (EVIDENCE).

Sec. 19.05. Renumbers existing Section 19.07 (CRIMINALLY NEGLIGENT HOMICIDE) and makes an offense under that section a state jail felony rather than a Class A misdemeanor.

## CHAPTER 20. KIDNAPPING AND FALSE IMPRISONMENT

Sec. 20.02. Makes a nonsubstantive change.

Sec. 20.04. AGGRAVATED KIDNAPPING. Allows a defendant, at the punishment stage of a trial, to raise the issue as to whether he voluntarily released the victim in a safe place, and if proven makes the offense a second degree felony.

## CHAPTER 21. SEXUAL OFFENSES

Secs. 21.06, 21.07, and 21.08 make nonsubstantive changes.

Sec. 21.11. INDECENCY WITH A CHILD. Deletes existing language making it a defense to prosecution that the child was 14 years old or older and had engaged promiscuously in sexual acts.

## CHAPTER 22. ASSAULTIVE OFFENSES

Sec. 22.01. ASSAULT. Deletes existing language that increases the degree of offense under certain conditions. Makes the offense of intentionally or knowingly threatening another with imminent bodily injury a Class C misdemeanor.

Sec. 22.011. SEXUAL ASSAULT. Adds to the list of conditions under which sexual assault is without the consent of the other person if the actor is a public servant who coerces the other person to submit or participate. Deletes existing language that makes it a defense to prosecution for sexual assault of a child that the child was older than 14 and had previously engaged promiscuously in sexual activity. Provides that it is a defense to prosecution for sexual assault of a child that the conduct consisted of medical care and did not include any contact between the anus or sexual organ of the child and the mouth, anus, or sexual organ of the actor or third party. Provides that it is an affirmative defense to prosecution for sexual assault to a child that the actor was not more than three years older than the victim and the victim was at least 14 years of age. Deletes language relating to the prosecution against a spouse.

Deletes existing Sec. 22.012 (INTENTIONALLY EXPOSING ANOTHER TO AIDS OR HIV).

Sec. 22.02. AGGRAVATED ASSAULT. Provides that a person commits the offense of aggravated assault if the person causes serious bodily injury to another or uses or exhibits a deadly weapon during the commission of the assault. Increases the degree of such an offense from a third degree felony to a second degree felony. Sets forth conditions under which the offense is a first degree felony. Deletes existing language classifying other acts as aggravated assault.

Sec. 22.021. AGGRAVATED SEXUAL ASSAULT. Provides that a person commits an offense if the person acts in concert with another who engages in certain conduct toward the same victim and occurring in the course of the same criminal episode.

Deletes existing Sec. 22.03 (DEADLY ASSAULT ON LAW ENFORCEMENT OR CORRECTIONS OFFICER, MEMBER OR EMPLOYEE OF BOARD OF PARDONS AND PAROLES, COURT PARTICIPANT, PROBATION PERSONNEL, OR EMPLOYEE OF TEXAS YOUTH COMMISSION).

Sec. 22.04. INJURY TO A CHILD, ELDERLY INDIVIDUAL, OR DISABLED INDIVIDUAL. Provides that the offense of causing injury to a child, elderly individual, or disabled individual is a state jail felony rather than a Class A misdemeanor if the conduct was engaged in recklessly. Provides that such an offense is a state jail felony rather than a Class A misdemeanor if the person acted with criminal negligence. Sets forth additional defenses to prosecution under this section. Makes conforming changes.

Sec. 22.041. ABANDONING OR ENDANGERING CHILD. Makes it a state jail felony rather than a Class A misdemeanor for a person to abandon a child with intent to return for the child. Makes it a state jail felony rather than a Class A misdemeanor for a person to intentionally, knowingly, recklessly, or with criminal negligence, endanger a child younger than 15 years of age.

Sec. 22.05. New title: DEADLY CONDUCT. Adds to the offenses under this section the offense of knowingly discharging a firearm at or in the direction of one or more individuals or a habitation, building, vehicle, and is reckless as to whether the habitation, building, or vehicle is occupied. Defines "building," "habitation," and "vehicle." Makes the offense of reckless endangerment a Class A misdemeanor rather than a Class B misdemeanor. Makes the offense of deadly discharging of a firearm a third degree felony.

Secs. 22.06 and 22.07. Make conforming changes.

Sec. 22.08. AIDING SUICIDE. Makes the offense of aiding suicide a state jail felony rather than a third degree felony if such act results in serious bodily injury.

Secs. 22.09 and 22.10. Make conforming changes.

## TITLE 6. OFFENSES AGAINST THE FAMILY

### CHAPTER 25. OFFENSES AGAINST THE FAMILY

Sec. 25.01. BIGAMY. Reduces the offense of bigamy from a third degree felony to a Class A misdemeanor.

Sec. 25.02. New title: PROHIBITED SEXUAL CONDUCT.

Sec. 25.03. Makes conforming changes.

Sec. 25.031. AGREEMENT TO ABDUCT FROM CUSTODY. Specifies that this section applies to the abduction of a child younger than 18 years of age. Provides that an offense under this section is a state jail felony rather than a third degree felony.

Sec. 25.05. CRIMINAL NONSUPPORT. Provides that criminal nonsupport is a third degree felony if the person leaves the state to reside in another state. Makes an offense under this

section a state jail felony rather than a Class A misdemeanor or a third degree felony.

Deletes existing text of Sec. 25.06.

Sec. 25.06. Redesignates existing Section 25.07.

Sec. 25.07. VIOLATION OF A PROTECTIVE ORDER. Deletes existing language making the offense of a person convicted two or more times under this section a third degree felony.

Sec. 25.08. SALE OR PURCHASE OF CHILD. Specifies that this section applies to the possession of a child younger than 18 years of age. Deletes existing language making the offense of a person previously convicted under this section a second degree felony.

## TITLE 7. OFFENSES AGAINST PROPERTY

### CHAPTER 28. ARSON, CRIMINAL MISCHIEF, AND OTHER PROPERTY DAMAGE OR DESTRUCTION

Sec. 28.02. Makes conforming changes.

Sec. 28.03. CRIMINAL MISCHIEF. (b) Provides that criminal mischief is a Class C misdemeanor if the amount of pecuniary loss is less than \$20. Provides that criminal mischief is a Class B misdemeanor if the amount of pecuniary loss is \$20 or more but less than \$500. Provides that criminal mischief is a Class A misdemeanor if the amount of pecuniary loss is \$500 or more but less than \$1,500, or less than \$1,500 and the actor causes impairment or interruption of certain public services. Makes criminal mischief a state jail felony instead of a third degree felony if the amount of pecuniary loss is \$1,500 or more but less than \$20,000. Makes criminal mischief a third degree felony rather than a second degree felony if the amount of pecuniary loss is \$20,000 or more but less than \$100,000. Makes criminal mischief a second degree felony if the amount of pecuniary loss is \$100,000 or more but not less than \$200,000. Makes criminal mischief a first degree felony if the amount of pecuniary loss is \$200,000 or more.

(c) Makes nonsubstantive changes.

(f) Makes criminal mischief a state jail felony rather than a third degree felony if the damage or destruction is inflicted on a place of worship or human burial, a public monument, or certain community centers and the loss is less than \$20,000.

Sec. 28.06. AMOUNT OF PECUNIARY LOSS. Provides that if the amount of pecuniary loss cannot be determined, the loss is deemed to be greater than \$500 but less than \$1,500.

Sec. 28.07. INTERFERENCE WITH RAILROAD PROPERTY. Provides that a penalty under this section is a second degree felony if the amount of loss is between \$100,000 and \$200,000 or a first degree felony if the amount of loss is more than \$200,000. Makes conforming changes.

Deletes existing Sec. 28.08 (INTERFERENCE WITH ANIMALS OR ANIMAL FACILITIES).

### CHAPTER 29. ROBBERY

Makes conforming changes.

### CHAPTER 30. BURGLARY AND CRIMINAL TRESPASS

Sec. 30.02. BURGLARY. Provides that an offense under this section is a state jail felony if committed in a building other than a habitation or a second degree felony if committed in a habitation. Provides that an offense under this section is a first degree felony if the premises are a habitation and any party to the offense entered the habitation with the intent

to commit a felony other than felony theft.

Sec. 30.04. BURGLARY OF VEHICLES. Makes an offense under this section a Class A misdemeanor rather than a third degree felony.

Sec. 30.05. CRIMINAL TRESPASS. Amends the definition of "notice."

## CHAPTER 31. THEFT

Sec. 31.01. DEFINITIONS. Amends the definitions of "service" and "effective consent" and deletes the definition of "coercion."

Sec. 31.02. Makes a conforming change.

Sec. 31.03. THEFT. Deletes language relating to certain property that is presumed to have been appropriated without the owner's effective consent. Provides that an offense is a Class B misdemeanor if the value of the property stolen is \$20 or more but less than \$500; a Class A misdemeanor if the value of the property stolen is \$500 or more but less than \$1,500; a state jail felony if the value of the property stolen is \$1,500 or more but less than \$20,000; a felony of the third degree if the value of the property stolen is \$20,000 or more but less than \$100,000; a felony of the second degree if the value of the property is \$100,000 or more but less than \$200,000; or a first degree felony if the value of the property is more than \$200,000.

Sec. 31.04. THEFT OF SERVICE. Provides that an offense is a Class B misdemeanor if the value of the service stolen is \$20 or more but less than \$500; a Class A misdemeanor if the value of the service stolen is \$500 or more but less than \$1,500; a state jail felony if the value of the service stolen is \$1,500 or more but less than \$20,000; a felony of the third degree if the value of the service stolen is \$20,000 or more but less than \$100,000; a felony of the second degree if the value of the service stolen is \$100,000 or more but less than \$200,000; or a first degree felony if the value of the service stolen is more than \$200,000. Makes conforming changes.

Secs. 31.06 and 31.07. Make conforming changes.

Sec. 31.08. VALUE. (c) Provides that if property or service has value that cannot be reasonably ascertained by the criteria set forth in Subsections (a) and (b) the property or service is deemed to have a value of \$500 or more but less than 1,500, except as otherwise provided by this subsection. Provides that if the service is cable television service or subscription television service, the service is deemed to have a value of \$50 or more but less than \$500, unless proof exists of a greater value. Makes conforming changes.

Sec. 31.11. TAMPERING WITH IDENTIFICATION NUMBERS. Provides that an offense under this section is a Class A misdemeanor. Deletes existing Subsection (e) relating to a third degree felony. Makes conforming changes.

Sec. 31.12. Deletes existing section relating to the unauthorized use of television decoding and interception devices or cable descrambling, decoding, or inception devices.

Sec. 31.13. Deletes existing Section 31.13 relating to the manufacture, sale or distribution of television or cable decoding devices.

## CHAPTER 32. FRAUD

### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 32.01. DEFINITIONS. Amends the definition of "financial institution" to include a savings and loan association. Makes conforming changes.

### SUBCHAPTER B. FORGERY

Sec. 32.21. Makes conforming changes.

Sec. 32.22. CRIMINAL SIMULATION. (a) Provides that a person commits an offense if, with intent to defraud or harm another he makes or alter an object, in whole or in part, so that it appears to have value because of age, antiquity, rarity, source, or authorship that it does not have. Deletes language relating to a person who sells or passes an object so made or altered.

#### SUBCHAPTER C. CREDIT

Sec. 32.31. New title: CREDIT CARD OR DEBIT CARD ABUSE. (a) Amends the definition of "cardholder," and adds definitions of "debit card," "expired debit card," "unmanned teller machine," and "customer convenience terminal."

(b)-(c) Make conforming and nonsubstantive changes.

(d) Decreases an offense under this section from a third degree felony to a state jail felony.

Sec. 32.32. Makes nonsubstantive changes.

Sec. 32.33. HINDERING SECURED CREDITORS. Sets forth an array of offenses ranging from a Class C misdemeanor to a first degree felony, contingent on the value of property harmed. Sets forth an array of offenses under this subsection ranging from a Class B misdemeanor to a first degree felony, contingent on the value of property harmed. Deletes existing text and redesignates existing Subsection (f).

Deletes existing Sections 32.34 (Fraud in Insolvency) and 32.35 (Receiving Deposit, Premium, or Investment in Failing Financial Institution).

Sec. 32.34. FRAUDULENT TRANSFER OF A MOTOR VEHICLE. Redesignates existing Section 32.36. Makes nonsubstantive changes. (f) Reduces an offense under Subsection (b)(1), (b)(2), or (b)(3) from a third degree felony to a state jail felony if the value of the motor vehicle is less than \$20,000, or from a second degree felony to a third degree felony if the value of the motor vehicle is \$20,000 or more.

Sec. 32.35. CREDIT CARD TRANSACTION RECORD LAUNDERING. Redesignates existing Section 32.37. Makes nonsubstantive changes. Sets forth an array of offenses under this subsection ranging from a Class C misdemeanor to a first degree felony, contingent on the amount of the record of a sale.

#### SUBCHAPTER D. OTHER DECEPTIVE PRACTICES

Secs. 32.41 and 32.42. Make nonsubstantive changes.

Sec. 32.43. COMMERCIAL BRIBERY. Makes nonsubstantive changes. Decreases an offense under this section from a third degree felony to a state jail felony.

Sec. 32.44. RIGGING PUBLICLY EXHIBITED CONTEST. Makes nonsubstantive changes. Provides that an offense under this section is a Class A misdemeanor. Deletes existing Subsection (d).

Sec. 32.441. ILLEGAL RECRUITMENT OF AN ATHLETE. Makes nonsubstantive changes. Sets forth an array of offenses under this subsection ranging from a Class C misdemeanor to a first degree felony, contingent on the value of the benefit received.

Sec. 32.45. MISAPPLICATION OF FIDUCIARY PROPERTY OR PROPERTY OF FINANCIAL INSTITUTION. Sets forth an array of offenses under this section ranging from a Class C misdemeanor to a first degree felony, contingent on the value of the property misapplied.

Sec. 32.46. SECURING EXECUTION OF DOCUMENT BY DECEPTION. Sets forth an array of offenses under this section ranging from a Class C misdemeanor to a first degree felony, contingent on the value of the property or service secured by deception.

Sec. 32.47. FRAUDULENT DESTRUCTION, REMOVAL, OR CONCEALMENT OF WRITING. Decreases an offense under this section from a third degree felony to a state jail felony.

Deletes existing Sections 32.49 (Issuance of Checks Printed on Red Paper), 32.50 (Debit Card Abuse), 32.51 (Penalty for Fraudulently Obtaining or Denying Workers' Compensation Benefits), 32.52 (Fraudulent Statement to Financial Institution), 32.53 (Taxicab Fares), and 32.54 (Penalty for Fraudulently Obtaining Workers' Compensation Insurance Coverage).

Deletes existing Subchapter E (Savings and Loan Associations).

## CHAPTER 33. COMPUTER CRIMES

Sec. 33.01. DEFINITIONS. Defines "access," "effective consent," "harm," "owner," and "property," amends the definitions of "computer network" and "computer system," and deletes the definition of "damage."

Sec. 33.02. BREACH OF COMPUTER SECURITY. (a) Provides that a person commits an offense if the person knowingly accesses a computer, computer network, or computer system without the effective consent of the owner.

(b) Makes conforming changes.

(c) Provides that an offense under this section is a Class A misdemeanor unless the actor's intent is to obtain a benefit or defraud or harm another, in which event the offense is either a state jail division felony or a third degree felony, contingent on the value of the benefit or the amount of the loss or harm.

(d) Authorizes a person who is subject to prosecution under this section and any other section of this code to be prosecuted under either or both sections.

Sec. 33.03. Deletes existing Section 33.03 (Harmful Access) and redesignates existing Section 33.04. Makes nonsubstantive changes.

Sec. 33.04. Redesignates existing Section 33.05.

## TITLE 8. OFFENSES AGAINST PUBLIC ADMINISTRATION

### CHAPTER 36. BRIBERY AND CORRUPT INFLUENCE

Sec. 36.01. Deletes definitions of "coercion" and "official proceeding."

Secs. 36.02-36.04. Make conforming changes.

Sec. 36.05. TAMPERING WITH WITNESS. Provides that a person commits an offense if the person offers, confers, or agrees to confer any benefit on a witness or coerces a witness to abstain from, discontinue, or delay the prosecution of another witness. Sets forth defenses to prosecution under this section.

Sec. 36.06. New title: OBSTRUCTION OR RETALIATION. Provides that a person commits an offense if the person harms or threatens to harm another by an unlawful act to prevent or delay the service of another as a public servant, witness, prospective witness, informant, or a person who has reported or who the actor knows intends to report the occurrence of a crime. Makes conforming changes.

Sec. 36.07. ACCEPTANCE OF HONORARIUM. Makes conforming changes.

Sec. 36.08. GIFT TO PUBLIC SERVANT SUBJECT TO HIS JURISDICTION. Authorizes a public servant who receives an unsolicited benefit that the public servant is prohibited from accepting to donate the benefit to a governmental entity that has the authority to accept the gift or to donate the benefit to a recognized tax-exempt charitable organization formed for educational, religious, or scientific purposes.

Sec. 36.10. NON-APPLICABLE. Sets forth additional items that do not apply to Sections 36.08 and 36.09.

#### CHAPTER 37. PERJURY AND OTHER FALSIFICATION

Sec. 37.01. DEFINITIONS. Deletes the definition of "official proceeding."

Sec. 37.02. PERJURY. (a) Provides that a person commits an offense if, among other items, with the intent to deceive and with the knowledge of the statement's meaning, he makes a false unsworn declaration under Chapter 132, Civil Practice and Remedies Code.

Secs. 37.04, 37.05, 37.06, and 37.07. Make nonsubstantive changes.

Sec. 37.08. FALSE REPORT TO PEACE OFFICER. (a) Provides that a person commits an offense if, with intent to deceive, he knowingly makes a false statement to a peace officer conducting a criminal investigation and the statement is material to the investigation.

Sec. 37.10. TAMPERING WITH GOVERNMENTAL RECORD. Makes nonsubstantive changes. (c) Provides that an offense under this section is a Class A misdemeanor unless the actor's intent is to defraud or harm another, in which event the offense is a state jail, rather than a third degree, felony.

(f) Provides that it is a defense to prosecution under Subsection (a)(1), (a)(2), or (a)(5) that the false entry or false information could have no effect on the government's purpose for requiring the governmental record.

Sec. 37.12. Makes nonsubstantive changes.

#### CHAPTER 38. OBSTRUCTING GOVERNMENTAL OPERATION

Sec. 38.01. DEFINITIONS. Deletes definitions of "complaining witness," "funeral establishment," "hospital," and "official proceeding." Adds definitions of "finance," "fugitive from justice," "invest funds," "public media," and "solicit employment." Amends definitions of "custody" "economic benefit," and "escape."

Sec. 38.02. FAILURE TO IDENTIFY. (a) Makes a nonsubstantive change.

(b) Provides that a person commits an offense if the person intentionally gives false information.

(c) Deletes definition of "fugitive from justice."

(d) Deletes language requiring a defendant to have been previously convicted of an offense under this section to make the offense a Class B misdemeanor.

Sec. 38.03. Makes a nonsubstantive change.

Sec. 38.04. EVADING ARREST OR DETENTION. Provides that detention of a person must be lawful in order for an offense to be committed. Deletes existing subsections (b) and (c), and deletes existing language authorizing an offense under this section to be a Class A misdemeanor if certain conditions are met.

Sec. 38.05. Makes a conforming change.

Deletes existing Section 38.06 (Compounding).

Sec. 38.06. ESCAPE. Makes an offense a second degree felony if the actor causes bodily injury to effect his escape. Makes an offense a first degree felony if the actor causes serious bodily injury or uses or threatens to use a deadly weapon.

Sec. 38.07. PERMITTING OR FACILITATING ESCAPE. Makes it a second degree felony for a person to permit or facilitate the escape of a person in custody confined in a secure correctional facility after conviction of a felony.

Sec. 38.08. Makes conforming changes.

Sec. 38.09. Provides that it is a defense to prosecution that the appearance was incident to community supervision, parole, or an intermittent sentence.

Sec. 38.10. BAIL JUMPING AND FAILURE TO APPEAR. Deletes existing language exempting appearances incident to probation or parole.

Deletes existing Section 38.111 (FAILURE TO RETURN TO CUSTODY FOLLOWING WORK RELEASE).

Sec. 38.11. New title: PROHIBITED SUBSTANCES IN CORRECTIONAL FACILITY OR ON PROPERTY OF TEXAS DEPARTMENT OF CRIMINAL JUSTICE. Makes it an offense for a person to possess an alcoholic beverage in a correctional facility. Authorizes a person who is subject to prosecution under this section and either Chapter 481 or 483, Health and Safety Code, to be prosecuted under this section or the appropriate chapter of the Health and Safety Code. Provides that a person commits an offense if the person takes or possesses a controlled substance or dangerous drug on property owned, used, or controlled by the department, with an exception. Provides that if a person commits the offense of criminal attempt to commit an offense, the offense is a third degree felony. Makes conforming changes. Deletes definitions of "alcoholic beverage," "controlled substance," "dangerous drug," and institutional division."

Sec. 38.113. UNAUTHORIZED ABSENCE FROM COMMUNITY CORRECTIONS FACILITY. Provides that a person commits an offense if the person fails to report to or leaves a facility in violation of probation conditions. Provides that the offense is a state jail felony.

Sec. 38.12. BARRATRY. Sets forth criteria constituting an offense under this section. Provides an exception. Sets forth the penalties for offenses under this section. Deletes a large portion of the existing text of this section.

Deletes existing Sections 38.14-38.16 (PREVENTING EXECUTION OF CIVIL PROCESS, TAMPERING WITH DEVICES DESIGNED TO PREVENT DRIVING WHILE INTOXICATED, and INJURY TO OR INTERFERENCE WITH ANIMAL UNDER SUPERVISION OF PEACE OFFICER OR DEPARTMENT OF CORRECTIONS EMPLOYEE).

Sec. 38.14. TAKING OR ATTEMPTING TO TAKE WEAPON FROM PEACE OFFICER. Makes it a state jail offense for a person to take or attempt to take a peace officer's firearm, nightstick, or chemical dispensing device.

Sec. 38.15. New title: INTERFERENCE WITH PUBLIC DUTIES. (a) Sets forth criteria for committing an offense under this section.

(e) Defines "emergency."

## CHAPTER 39. ABUSE OF OFFICE

Sec. 39.01. DEFINITIONS. Defines "law relating to public servant's office or employment"

and "misuse."

Sec. 39.02. New title: ABUSE OF OFFICIAL CAPACITY. (a) Amends the conditions under which a public servant commits an offense under this section.

(c) Provides that an offense under Subsection (a)(2) is a Class B misdemeanor if the value of the use of the thing misused is less than \$500; is a Class A misdemeanor if the value of the thing misused is \$500 or more but less than \$1,500; a state jail felony if the value of the thing misused is \$1,500 or more but less than \$20,000; a felony of the third degree if the value of the use of the thing misused is \$20,000 or more but less than \$100,000; a felony of the second degree if the value of the use of the thing misused is \$100,000 or more but less than \$200,000; and a felony of the first degree if the value of the thing misused is more than \$200,000.

Sec. 39.03. Redesignates existing Section 39.02.

Sec. 39.04. New title: VIOLATIONS OF THE CIVIL RIGHTS OF PERSON IN CUSTODY. (a) Provides that an official or employee of a correctional facility or a peace officer commits an offense if he intentionally denies or impedes a person in custody in the exercise or enjoyment of any right, privilege, or immunity knowing the conduct is unlawful.

(b) Provides that an offense under this section is a Class A misdemeanor. Deletes language providing that an offense under this section is a felony.

Sec. 39.05. FAILURE TO REPORT DEATH OF PRISONER. Provides that a person commits an offense if the person is required to conduct an investigation and file a report by Article 49.18, rather than Article 49.08(b), Code of Criminal Procedure, and the person fails to do so.

Sec. 39.06. MISUSE OF OFFICIAL INFORMATION. (a) Provides that a public servant commits an offense if, in reliance on information to which he has access by virtue of his office or employment and that has not been made public, he takes certain actions.

(b) Provides that a public servant, regardless of type of servant, commits an offense if with intent to obtain a benefit or with intent to harm or defraud another, he disclose or uses information for a nongovernmental purpose that he has access to by means of his office or employment and has not been made public. Deletes language referencing court decisions.

(c) Provides that a person commits an offense if, with intent to obtain a benefit or with intent to harm or defraud another, he solicits or receives from a public servant certain information. Deletes language regarding judicial decisions.

(d) Defines "information that has not been made public."

(e)-(f) Provide penalties for offenses under this section.

## TITLE 9. OFFENSES AGAINST PUBLIC ORDER AND DECENCY

### CHAPTER 42. DISORDERLY CONDUCT AND RELATED OFFENSES

Secs. 42.01-42.05. Make conforming changes.

Sec. 42.06. FALSE ALARM OR REPORT. (b) Provides that an offense under this section is a Class A misdemeanor unless certain conditions are met in which event the offense is a state jail felony, rather than a third degree felony.

Sec. 42.061. SILENT OR ABUSIVE CALLS TO 9-1-1 SERVICE. (d) Deletes language authorizing certain offenses under this section to be a Class A misdemeanor.

Sec. 42.07. Makes a nonsubstantive change.

Deletes existing Sections 42.08 and 42.09 (PUBLIC INTOXICATION and DESECRATION OF VENERATED OBJECT).

Sec. 42.09. Makes a conforming change.

Sec. 42.10. DOG FIGHTING. Provides that an offense under Subdivisions (2)-(4) of Subsection (a) is a state jail felony, rather than a third degree felony. Makes a nonsubstantive change. Makes conforming changes.

Deletes existing Section 42.13 (INTERFERENCE WITH EMERGENCY COMMUNICATION).

## CHAPTER 43. PUBLIC INDECENCY

### SUBCHAPTER A. PROSTITUTION

Makes nonsubstantive changes.

### SUBCHAPTER B. OBSCENITY

Secs. 43.21 and 43.22. Make nonsubstantive changes.

Sec. 43.23. OBSCENITY. (b) Reduces the offense under Subsection (a) from a third degree felony to a state jail felony.

(d) Makes a nonsubstantive change.

(g) Provides that it is an affirmative defense to prosecution under this section that the person who possesses or promotes material or a device proscribed by this section does so for a bona fide medical, psychiatric, judicial, legislative, or law enforcement purpose.

Sec. 43.24. Makes nonsubstantive changes.

Sec. 43.25. SEXUAL PERFORMANCE BY A CHILD. Deletes the definition of "sado-masochistic abuse." Provides that a person commits an offense if the person employs, authorizes, or induces, or if a parent or guardian consents to such an act, a child younger than 18, rather than 17, years old to engage in sexual conduct or a sexual performance. Makes conforming changes.

Secs. 43.251-43.26. Make nonsubstantive changes.

## TITLE 10. OFFENSES AGAINST PUBLIC HEALTH, SAFETY, AND MORALS

### CHAPTER 46. WEAPONS

Sec. 46.01. DEFINITIONS. Amends the definition of "chemical dispensing device."

Sec. 46.02. UNLAWFUL CARRYING WEAPONS. Sets forth defenses to prosecution under this section for intentionally, knowingly, or recklessly carrying on or about his person a handgun, illegal knife, or club. Makes conforming changes.

Sec. 46.03. PLACES WEAPONS PROHIBITED. Defines "secured area" and sets forth defenses to prosecution for possession of a prohibited weapon in a secured area of an airport or on a school bus. Makes conforming changes.

Sec. 46.04. UNLAWFUL POSSESSION OF FIREARM BY FELON. Sets forth circumstances in which a person who has been convicted of a felony commits an offense if he possesses a firearm.

Sec. 46.05. PROHIBITED WEAPONS. Makes conforming changes.

Sec. 46.06. UNLAWFUL TRANSFER OF CERTAIN WEAPONS. Adds the sale of a firearm or ammunition for a firearm to any person who has been convicted of a felony before the fifth anniversary of the later of certain dates to those actions which are considered an offense. Makes a nonsubstantive change.

Sec. 46.09. COMPONENTS OF EXPLOSIVES. Makes conforming changes.

Deletes Section 46.12 (UNLAWFUL CARRYING OF WEAPONS AT AIRPORT).

#### CHAPTER 47. GAMBLING

Sec. 47.01. DEFINITIONS. Amends definitions of "bet," "gambling place," and "gambling device." Adds the definition of "bookmaking." Makes conforming changes.

Sec. 47.02. Makes conforming changes.

Sec. 47.03. GAMBLING PROMOTION. Reduces the offense of gambling promotion from a felony of the third degree to a Class A misdemeanor. Makes conforming changes.

Sec. 47.04. KEEPING A GAMBLING PLACE. Deletes text relating to a gambling place aboard an ocean going vessel. Reduces the offense of keeping a gambling place from a felony of the third degree to a Class A misdemeanor.

Sec. 47.05. COMMUNICATING GAMBLING INFORMATION. Sets forth an exception to the offense of communicating information as to gambling. Reduces an offense under this section from a felony of the third degree to a Class A misdemeanor.

Sec. 47.06. POSSESSION OF GAMBLING DEVICE, EQUIPMENT, OR PARAPHERNALIA. Adds the commitment of an offense if a person, with the intent to further gambling, knowingly owns, manufactures, transfers commercially, or possesses gambling paraphernalia. Sets forth a defense to prosecution for this offense. Deletes text relating to gambling aboard an ocean going vessel. Reduces the offense under this section from a felony of the third degree to a Class A misdemeanor. Makes conforming changes. Provides that a district or county attorney is not required to have a search warrant or subpoena to inspect a gambling device or gambling equipment of paraphernalia on certain ocean-going vessels.

Sec. 47.07. EVIDENCE. Deletes existing section relating to possession of gambling paraphernalia. Deletes text relating to prima facie evidence.

Sec. 47.09. OTHER DEFENSES. Sets forth defenses to prosecution under this chapter for gambling conduct.

Deletes sections relating to bingo, pari-mutuel wagering on certain races, raffle by nonprofit organization, and state lottery.

Sec. 47.10. Makes a conforming change.

#### CHAPTER 48. CONDUCT AFFECTING PUBLIC HEALTH

Sec. 48.02. PROHIBITION OF THE PURCHASE AND SALE OF HUMAN ORGANS. Reduces the violation of this section from a felony of the third degree to a Class A misdemeanor.

#### CHAPTER 49. INTOXICATION AND ALCOHOLIC BEVERAGE OFFENSES

Sec. 49.01. DEFINITIONS. Defines "alcohol concentration," "intoxicated," "motor vehicle," and "watercraft."

Sec. 49.02. PUBLIC INTOXICATION. Sets forth the offense of public intoxication and a defense to prosecution under this section. Provides that an offense under this section is a Class C misdemeanor and is not a lesser included offense under Section 49.04.

Sec. 49.03. CONSUMPTION OR POSSESSION OF ALCOHOLIC BEVERAGE IN MOTOR VEHICLE. Sets forth the offense of consumption or possession of an alcoholic beverage in a motor vehicle and provides that the offense is a Class C misdemeanor.

Sec. 49.04. DRIVING WHILE INTOXICATED. Sets forth the offense of driving while intoxicated. Sets forth the classes of offenses for a violation of this section.

Sec. 49.05. FLYING WHILE INTOXICATED. Sets forth the offense of flying while intoxicated and provides that an offense under this section is a Class B misdemeanor, with an exception.

Sec. 49.06. BOATING WHILE INTOXICATED. Sets forth the offense of boating while intoxicated and provides that an offense under this section is a Class B misdemeanor, with an exception.

Sec. 49.07. INTOXICATION ASSAULT. Sets forth the offense of intoxication assault. Defines "serious bodily injury." Provides that an offense under this section is a felony of the third degree.

Sec. 49.08. INTOXICATION MANSLAUGHTER. Sets forth the offense of intoxication manslaughter and provides that an offense under this section is a felony of the second degree.

Sec. 49.09. ENHANCED OFFENSES AND PENALTIES. Sets forth classes of offenses for an offense under Section 49.04, 49.05, or 49.06 if it is shown that the person has been previously convicted for the offense. Defines "offense relating to the driving or operating of a motor vehicle while intoxicated," "offense of operating an aircraft while intoxicated," and "offense of operating a watercraft while intoxicated." Provides that a conviction for an offense under Section 49.04, 49.05, or 49.06 that occurs on or after September 1, 1994 is a final conviction. Prohibits a conviction from being used for purposes of enhancement under this section if certain conditions exist.

Sec. 49.10. NO DEFENSE. Provides that in a prosecution under Sections 49.03-49.08, the fact that the defendant is or has been entitled to use the substance is not a defense.

## TITLE 11. ORGANIZED CRIME

### CHAPTER 71. ORGANIZED CRIME

Sec. 71.01. DEFINITIONS. Deletes definition of "criminal street gang" and makes a nonsubstantive change.

Sec. 71.02. ENGAGING IN ORGANIZED CRIMINAL ACTIVITY. Reduces the offense of gambling in a combination from a felony to a Class A misdemeanor. Provides that if the most serious offense of engaging in organized criminal activity is a Class A misdemeanor, the offense is reduced from a felony of the third degree to a state jail felony. Makes conforming changes. Sets forth procedures for a defendant to raise the issue as to whether he withdrew from the combination before commission of an offense and made an effort to prevent the commission of the offense. Makes conforming changes.

Sec. 71.03. DEFENSES EXCLUDED. Reduces the number of persons in the initial combination from five to three for the provisions that are not defenses to prosecution. Makes nonsubstantive changes.

Sec. 71.05. Makes conforming changes.

SECTION 1.02. Repealer: Section 5, Chapter 275, Acts of the 67th Legislature, 1981, and

Section 1, Chapter 587, Acts of the 69th Legislature, 1985.

SECTION 1.03. Amends Chapter 3, Code of Criminal Procedure, by adding Article 3.04, as follows:

Art. 3.04. OFFICIAL MISCONDUCT. Defines "official misconduct" and "public servant."

SECTION 1.04. Amends Chapter 14, Code of Criminal Procedure, by adding Article 14.031, as follows:

Art. 14.031. PUBLIC INTOXICATION. (a) Authorizes a peace officer to release an individual who commits an offense under Section 49.02, Penal Code, in lieu of arresting the individual if certain conditions exist.

(b) Authorizes a magistrate to release an individual arrested under Section 49.02, Penal Code, from custody if the magistrate determines the individual meets the conditions required for release in lieu of arrest under Subsection (a).

(c) Prohibits the release of an individual to an alcohol or drug treatment program from being considered in determining whether the individual should be released to such a program for subsequent incident or arrest.

(d) Prohibits a peace officer and the officer's employer from being held liable for damage to persons or property resulting from the actions of a released individual.

SECTION 1.05. Amends Article 14.06(b), Code of Criminal Procedure, to make a conforming change.

SECTION 1.06. Amends Article 18.20, Code of Criminal Procedure, by adding Section 18 to provide that this article expires September 1, 2005 and shall not be in force on and after that date.

SECTION 1.07. Amends Chapter 102A, Code of Criminal Procedure, by adding Article 102.017, as follows:

Art. 102.017. COSTS ATTENDANT TO INTOXICATION CONVICTIONS. Sets forth the procedures for a cost of \$15 imposed on a defendant on conviction of an offense relating to the driving or operating of a motor vehicle if a law enforcement agency visually recorded the defendant with an electronic device subsequent to the arrest of the defendant.

(b) Sets forth procedures for a cost imposed on a defendant as a cost of court on conviction of an offense relating to the driving or operating of a motor vehicle punishable under Section 49.04(b), except as provided by Subsection (d).

(c) Sets forth liability if a person commits an offense under Chapter 49, Penal Code, and as a direct result causes an incident resulting in an accident response by a public agency. Sets forth billing for the expense of an accident response. Prohibits a policy of motor vehicle insurance from covering payment of expenses. Defines "public agency."

(d) Provides that Subsections (a), (b), and (c) of this article do not apply to an offense under Section 49.02 or 49.03, Penal Code.

SECTION 1.08. Amends Section 24(g), Article 6687b, V.T.C.S., by amending Subdivision (2) and adding Subdivision (5), as follows:

(2)(B) Requires the Director of the Department of Public Safety to suspend or prohibit a person's driver's license if the records do not show the completion of an educational program for repeat offenders of driving while intoxicated as required after the date has passed. Provides that a suspension or prohibition order under this subsection is continued until the person successfully completes that program.

(5) Sets forth the increase of the period of suspension unless the Department of Public Safety has received notice that the person has completed an education program under Section 13, Article 42.12, Code of Criminal Procedure. Sets forth procedures on successful completion of the program. Provides that this subdivision does not apply to a person whose license the Department of Public Safety is prohibited from suspending under Subdivision (1) of this subsection.

SECTION 1.09. Amends Section 1, Article 6701f-5, V.T.C.S., to expand provisions of this section that provide for breath or blood analysis of drivers to determine intoxication to include operation of a motor vehicle in a public place and operation of a watercraft. Expands the purpose of a drug test to include detection of the presence of a dangerous drug or other substance, rather than detection of a drug only. Makes conforming changes.

SECTION 1.10. Amends Section 2, Article 6701f-5, V.T.C.S., by amending Subsection (f) and adding Subsections (j) and (k), as follows:

(f) Makes conforming changes.

(j) Limits application of this section to a person arrested for an offense involving the operation of a motor vehicle.

(k) Prohibits a suspension under this Act from being probated.

SECTION 1.11. Amends Sections 3(a), (c), (h), (i), and (j), Article 6701f-5, V.T.C.S., as follows:

(a), (c), (h), and (i) Make conforming changes.

(j) Amends the definitions of "alcohol concentration," "controlled substance," "drug," "public place," and "intoxicated." Adds a definition of "dangerous drug."

SECTIONS 1.12 - 1.16. Repealer:

Section 31.097, Parks and Wildlife Code;  
Section 1, Article 46f-3, V.T.C.S.;  
Section 107E, Article 6701d, V.T.C.S.;  
Article 6701f-1, V.T.C.S.; and  
Section 11.17, Chapter 10, Acts of the 72nd Legislature, 2nd Called Session.

SECTION 1.17. Provides that under the terms of Section 22.109(b), Government Code, Rule 412(e), Texas Rules of Criminal Evidence, is disapproved.

SECTION 1.18. Makes application of this article prospective.

SECTION 1.19. (a) Effective date: September 1, 1994, except as provided by Subsection (b).

(b) Provides that the repeal of Sections 12.422, 16.02(i), Penal Code, and SECTIONS 1.02, 1.06, and 1.16 of this article take effect September 1, 1993.

## ARTICLE 2

SECTION 2.01. Amends Section 481.002, Health and Safety Code, by adding Subdivision (49), to define "adulterant or dilutant."

SECTION 2.02. Amends Sections 481.108, 481.112, 481.118, 481.120-481.122, 481.125-481.129, and 481.131, Health and Safety Code, as follows:

Sec. 481.108. Provides that Title 4, Penal Code, applies to Section 481.126, except that the punishment for a preparatory offense under Section 481.126 is the punishment for a first degree felony.

Sec. 481.112. OFFENSE: MANUFACTURE OR DELIVERY OF SUBSTANCE IN PENALTY GROUP 1. Revises the penalty under this section for manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance listed in Penalty Group 1 as follows:

	<b>Revised Penalty/Amount</b>	<b>Current Penalty/Amount</b>
(b)	state jail felony/less than 1 gram	first degree felony/less than 28 grams
(c)	second degree felony/1 gram or more but less than 4 grams	aggravated first degree felony/28 grams or more
(d)	first degree felony/4 grams or more but less than 200 grams	life or 5 to 99 years and a fine of up to \$50,000/28 to 200 grams
(e)-(f)	make nonsubstantive changes	

Sec. 481.113. OFFENSE: MANUFACTURE OR DELIVERY OF SUBSTANCE IN PENALTY GROUP 2. Revises the penalty under this section for manufacture, delivery, or possession with intent to manufacture or deliver of a controlled substance listed in Penalty Group 2 as follows:

	<b>Revised Penalty/Amount</b>	<b>Current Penalty/Amount</b>
(b)	state jail felony/less than 1 gram	second degree felony/less than 28 grams
(c)	third degree felony/1 gram or more but less than 4 grams	aggravated second degree felony/28 grams or more
(d)	second degree felony/4 grams or more	life or 5 to 99 years and a fine of up to \$50,000/28 to 400 grams; or life or 10 to 99 years and a fine of up to \$100,000/more than 400 grams
(e)	makes nonsubstantive changes	

Sec. 481.114. OFFENSE: MANUFACTURE OR DELIVERY OF SUBSTANCE IN PENALTY GROUP 3 or 4. Revises the penalty under this section for manufacture, delivery, or possession with intent to manufacture or deliver of a controlled substance listed in Penalty Group 3 or 4 as follows:

	<b>Revised Penalty/Amount</b>	<b>Current Penalty/Amount</b>
(b)	state jail felony/less than 28 grams	third degree felony/less than 200 grams
(c)	second degree felony/28 grams or more	aggravated third degree felony/200 grams or more
(d)	1st degree felony/200-400 grams	life or 5 to 99 years and a fine of up to \$50,000/200 to 400 grams
(e)	makes nonsubstantive changes	

Sec. 481.115. OFFENSE: POSSESSION OF SUBSTANCE IN PENALTY GROUP 1. Revises the penalty under this section for possession of a controlled substance listed in Penalty Group 1, with an exception for possession of a substance for which the person has a prescription, as follows:

	<b>Revised Penalty/Amount</b>	<b>Current Penalty/Amount</b>
(b)	state jail felony/less than 1 gram	second degree felony/less than 28 grams

- |     |   |  |
|-----|---|--|
| (c) | third degree felony/1 gram or more but less than 4 grams      | aggravated second degree felony/28 grams or more                         |
| (d) | second degree felony/ 4 grams or more but less than 400 grams | life or 5 to 99 years and a fine of up to \$50,000/28 to 400 grams       |
| (e) | first degree felony/200-400 grams                             | life or 10 to 99 years and a fine of up to \$100,000/more than 400 grams |
| (f) | makes nonsubstantive changes                                  |  |

Sec. 481.116. OFFENSE: POSSESSION OF SUBSTANCE IN PENALTY GROUP 2. Revises the penalty under this section for possession of a controlled substance listed in Penalty Group 2, with an exception for possession of a substance for which the person has a prescription, as follows:

	<b>Revised Penalty/Amount</b>	<b>Current Penalty/Amount</b>
(b)	state jail felony/less than 1 gram	third degree felony/less than 28 grams
(c)	third degree felony/1 gram or more but less than 4 grams	aggravated third degree felony/28 grams or more
(d)	second degree felony/4 grams or more	life or 5 to 99 years and a fine of up to \$50,000/28 to 400 grams; or life or 10 to 99 years and a fine of up to \$100,000/more than 400 grams
(e)	life or 5 to 99 years, up to \$50,000 fine/400 grams or more	life or 10 to 99 years, up to \$100,000 fine/400 grams or more

Sec. 481.117. OFFENSE: POSSESSION OF SUBSTANCE IN PENALTY GROUP 3. Revises the penalty under this section for possession of a controlled substance listed in Penalty Group 3, with an exception for possession of a substance for which the person has a prescription, as follows:

	<b>Revised Penalty/Amount</b>	<b>Current Penalty/Amount</b>
(b)	Class A misdemeanor /less than 28 grams	Class A misdemeanor /less than 200 grams
(c)	second degree felony/28 to 200 grams	aggravated offense/28 to 200 grams
(d)	second degree felony/200 to 400 grams	life or 5 to 99 years and a fine of up to \$50,000/200 to 400 grams
(e)	life or 5 to 99 years, up to \$50,000 fine/400 grams or more	life or 10 to 99 years, up to \$100,000 fine/400 grams or more

Sec. 481.118. OFFENSE: POSSESSION OF SUBSTANCE IN PENALTY GROUP 4. Revises the penalty under this section for possession of a controlled substance listed in Penalty Group 4, with an exception for possession of a substance for which the person has a prescription, as follows:

	<b>Revised Penalty/Amount</b>	<b>Current Penalty/Amount</b>
(b)	Class B misdemeanor/less than 28 grams	Class B misdemeanor/less than 200 grams
(c)	third degree felony/28 to 200 grams	aggravated offense/28 to 200 grams

- |     |  |  |
|-----|--|--|
| (d) | second degree felony/200 to 400 grams                        | life or 5 to 99 years, up to \$50,000 fine/200 to 400 grams    |
| (e) | life or 5 to 99 years, up to \$50,000 fine/400 grams or more | life or 10 to 99 years, up to \$100,000 fine/400 grams or more |

Sec. 481.120. OFFENSE: DELIVERY OF MARIJUANA. Revises the penalty under this section for delivery of marijuana as follows:

	<b>Revised Penalty/Amount</b>	<b>Current Penalty/Amount</b>
(b)(3)	state jail felony/5 pounds or less but more than 1/4 ounce	third degree felony/4 ounces or less but more than 1/4 ounce
(b)(4)	second degree felony/50 pounds or less but more than 5 pounds	second degree felony/5 pounds or less but more than 4 ounces
(b)(5)	first degree felony/ 2,000 pounds or less but more than 50 pounds	first degree felony/50 pounds or less but more than 5 pounds
(b)(6)	life or 10 to 99 years, up to \$100,000 fine/more than 2,000 pounds	life or 5 to 99 years and a fine of up to \$50,000/200 pounds or less but more than 50 pounds; or life or 10 to 99 years and a fine of up to \$100,000/2,000 pounds or less but more than 200 pounds; life or 15 to 99 years and a fine of up to \$250,000/more than 2,000 pounds

Sec. 481.121. OFFENSE: POSSESSION OF MARIJUANA. Revises the penalty under this section for possession of a usable quantity of marijuana as follows:

	<b>Revised Penalty/Amount</b>	<b>Current Penalty/Amount</b>
(b)(3)	state jail felony/5 pounds or less but more than 4 ounces	third degree felony/5 pounds or less but more than 4 ounces
(b)(4)	third degree felony/50 pounds or less but more than 5 pounds	second degree felony/50 pounds or less but more than 5 pounds
(b)(5)	second degree felony/ 2,000 pounds or less but more than 50 pounds	aggravated second degree felony/more than 50 pounds
(b)(6)	life or 5 to 99 years, up to \$50,000 fine/more than 2,000 pounds	life or 5 to 99 years and a fine of up to \$50,000/200 pounds or less but more than 50 pounds; or life or 10 to 99 years and a fine of up to \$100,000/2,000 pounds or less but more than 200 pounds; life or 15 to 99 years and a fine of up to \$250,000/more than 2,000 pounds

Sec. 481.122. OFFENSE: DELIVERY OF CONTROLLED SUBSTANCE OR MARIJUANA TO MINOR. (a) Deletes the provision that an offense under this section is an aggravated offense.

(c) Revises the penalty for an offense under this section from a first degree felony to a second degree felony.

Sec. 481.125. OFFENSE: POSSESSION OR DELIVERY OF DRUG PARAPHERNALIA. Makes nonsubstantive changes. (e) Provides that an offense for a penalty for a person who

has been previously convicted under Subsection (b) or (c) is punishable by confinement in jail for a term of not more than one year or less than 90 days. Provides that an offense under Subsection (c) is a state jail felony.

Sec. 481.126. OFFENSE: ILLEGAL EXPENDITURE OR INVESTMENT. (a) Provides that a person commits an offense if the person knowingly or intentionally spends the funds the person knows are derived from the commission of an offense under Section 481.115(a) or 481.116(a), or punishable under Section 481.112(d), 481.112(e), 481.113(d), 481.114(c), 481.117(c), 481.118(c), 481.120(b)(5), 481.120(b)(6), 481.121(b)(5), or 481.121(b)(6).

(b) Provides that an offense under this section is a first degree felony.

Sec. 481.127. OFFENSE: UNAUTHORIZED DISCLOSURE OF INFORMATION. (b) Decreases from a third degree to a state jail felony an offense under this section.

Sec. 481.128. OFFENSE AND CIVIL PENALTY; COMMERCIAL MATTERS. (d) Decreases from a first or second degree to a state jail felony an offense under this section.

Sec. 481.129. OFFENSE: FRAUD. (g) Decreases from a third degree to a state jail felony an offense under Subsection (c)(2).

Sec. 481.131. OFFENSE: DIVERSION OF CONTROLLED SUBSTANCE PROPERTY OR PLANT. (b) Decreases from a third degree to a state jail felony an offense under this section.

SECTION 2.03. Amends Section 482.002, Health and Safety Code, to decrease from a third degree to a state jail felony an offense under this section.

SECTION 2.04. Amends Section 483.042, Health and Safety Code, to decrease from a third degree to a state jail felony an offense under this section.

SECTION 2.05. Amends Section 483.043, Health and Safety Code, to decrease from a third degree to a state jail felony an offense under this section.

SECTION 2.06. Amends Section 485.033, Health and Safety Code, to decrease from a third degree to a state jail felony an offense under this section.

SECTION 2.07. Repealer: Sections 481.106 (First Degree Felony) and 481.107 (Repeat Offenders), Health and Safety Code.

SECTION 2.08. Makes application of this article prospective.

SECTION 2.09. Effective date for this article: September 1, 1994.

### ARTICLE 3

SECTION 3.01. Amends Article 13.25(a), Code of Criminal Procedure, to add definitions for "access" and "owner."

SECTION 3.02. Amends Articles 14.03(a) and (d), Code of Criminal Procedure,

(a) Authorizes a peace officer to arrest without warrant persons found in suspicious places and under circumstances which reasonably show that the persons have been guilty of some felony, violation of Chapter 42, Penal Code, breach of peace, or offense under Section 49.02, Penal Code.

(d) Includes a person who commits a breach of the peace or an offense under Section 49.02, Penal Code, among those persons a peace officer is authorized to arrest outside his jurisdiction without a warrant.

SECTION 3.03. Amends Article 102.016(a), Code of Criminal Procedure, to require a person convicted of an offense under Chapter 49, Penal Code, other than an offense punishable as a Class C misdemeanor, or an offense under the Texas Commercial Driver's License Act, to pay as court costs \$30.

SECTION 3.04. Amends Article 102.081(b), to make conforming changes.

SECTION 3.05. Amends Chapter 16, Code of Criminal Procedure, by adding Article 16.22, as follows:

Art. 16.22. EXAMINATION AND TRANSFER OF SUSPECTED MENTALLY ILL OR RETARDED DEFENDANT. (a) Requires a magistrate, if it is determined that a person in a sheriff's custody is a person with mental illness or mental retardation, to order an examination of the defendant and, if necessary, transfer the defendant to the nearest appropriate mental health or mental retardation facility.

(b) Authorizes the court, after receiving the examination report, to resume the criminal proceedings against the defendant or further competency proceedings, if required.

SECTION 3.06. Amends Chapter 17, Code of Criminal Procedure, by adding Article 17.032, as follows:

Art. 17.032. RELEASE ON PERSONAL BOND OF CERTAIN MENTALLY ILL DEFENDANTS. (a) Defines "violent offense."

(b) Requires a magistrate to release a defendant on personal bond under certain conditions.

(c) Authorizes the magistrate to require as a condition of release on personal bond under this article that the defendant submit to outpatient or inpatient mental health treatment under certain conditions.

(d) Authorizes the magistrate to require the defendant to comply with other conditions that are reasonably necessary to protect the community.

(e) Sets forth conditions under which a person is considered to have been convicted of an offense.

SECTION 3.07. Makes application of this article prospective.

SECTION 3.08. Effective date for this article: September 1, 1994.

#### ARTICLE 4

SECTION 4.01. Amends Article 42.12, Code of Criminal Procedure, as follows:

Art. 42.12. New title: COMMUNITY SUPERVISION

Sec. 1. PURPOSE. Provides that it is the purpose of this article to place wholly within the state courts the responsibility for determining when the imposition of sentence in certain cases shall be suspended, the conditions of community supervision, rather than probation, and the supervision of defendants placed on community supervision, rather than probationers, in consonance with the powers assigned to the judicial branch of the Texas government.

Sec. 2. DEFINITIONS. Defines "court," "community supervision," and "supervision officer."

Sec. 3. New title: JUDGE ORDERED COMMUNITY SUPERVISION. (a) Authorizes a judge to suspend the imposition of the sentence and place the defendant on community supervision or impose a fine applicable to the offense and place the defendant on community supervision.

(b) Provides that in a felony case the minimum period of community supervision is the same as the minimum term of imprisonment applicable to the offense and the maximum period of community supervision is 10 years.

(c) Provides that the maximum period of community supervision in a misdemeanor case is two years.

(d) Authorizes a judge to increase the maximum period of community supervision in the manner provided by Section 22(c).

(e) Provides that a defendant is not eligible for community supervision under this section if the defendant is sentenced to a term of imprisonment that exceeds 10 years, or is sentenced to serve a term of confinement under Section 12.35, Penal Code. Deletes existing text for this section.

**Sec. 3g. New title: LIMITATION ON JUDGE ORDERED COMMUNITY SUPERVISION. Makes conforming changes.**

**Sec. 4. New title: JURY RECOMMENDED COMMUNITY SUPERVISION. (a) Authorizes a jury that imposes confinement as punishment for an offense to recommend that the judge suspend the imposition of the sentence and place the defendant on community supervision. Requires the judge to suspend the imposition of the sentence and place the defendant on community supervision if the jury makes that recommendation in the verdict.**

(b) Requires the judge, if the jury recommends that the judge place the defendant on community supervision, to place the defendant on community supervision for any period permitted.

(c) Authorizes a judge to increase the maximum period of community supervision in the manner provided under Section 22(c).

(d) Provides that a defendant is not eligible for community supervision under certain conditions.

(e) Provides that a defendant is eligible for community supervision only if before the trial begins the defendant files a written sworn motion with the judge that the defendant has not previously been convicted of a felony in this or any other state, and the jury enters in the verdict a finding that the information in the defendant's motion is true. Deletes existing language for this section.

**Sec. 5. New title: DEFERRED ADJUDICATION; COMMUNITY SUPERVISION. Makes conforming and nonsubstantive changes.**

**Secs. 6 and 7. Make conforming and nonsubstantive changes.**

**Sec. 8. New title: STATE BOOT CAMP PROGRAM. Makes conforming and nonsubstantive changes.**

**Sec. 9. PRESENTENCE INVESTIGATIONS. Makes conforming changes. (g) Provides that, unless requested by the defendant, a judge is not required to direct an officer to prepare a presentence report in a felony case under certain conditions.**

(k) Requires the judge, if a presentence report in a felony case is not required, to direct the officer to prepare a postsentence report containing the same information that would have been required for the presentence report, other than certain information. Requires the officer to send the postsentence report to the clerk of the court within a specific time frame, and requires the clerk to file the report with the papers in the case.

**Sec. 10. New title: AUTHORITY TO IMPOSE, MODIFY, OR REVOKE COMMUNITY**

**SUPERVISION.** Makes conforming changes. Deletes existing text of Subsection (j-3), and Sections 10A and 10B.

**Sec. 11. New title: BASIC CONDITIONS OF COMMUNITY SUPERVISION.** (a) Requires the judge to determine the conditions of community supervision and authorizes the judge to alter or modify the conditions. Authorizes the judge to impose any reasonable condition that is designed to protect or restore the community, protect or restore the victim, or punish, rehabilitate, or reform the defendant. Sets forth possible conditions of community supervision.

(b) Makes conforming changes.

(c) Deletes existing Subsections (c)-(f), redesignates Subsection (g), and makes conforming changes.

(d) Authorizes the judge, if the judge places a defendant on community supervision and the defendant is determined to be mentally ill by an examining expert, to require the defendant as a condition of community supervision to submit to outpatient or inpatient mental health treatment under certain conditions. Deletes existing Subsections (g)-(h).

**Sec. 12. New title: CONFINEMENT AS A CONDITION OF COMMUNITY SUPERVISION.** (a) Makes conforming and nonsubstantive changes.

(b) Prohibits a judge who requires as a condition of community supervision that the defendant serve a term in the community corrections facility that the defendant serve a term in the community corrections facility from imposing a term of confinement that, when added to the term imposed under Section 18, exceeds 24 months.

(c) Authorizes a judge to impose confinement as a condition of community supervision on placing the defendant on supervision or at any time during the supervision period. Authorizes the judge to impose periods of confinement as a condition of community supervision in increments smaller than the maximum periods provided by Subsection (a) but prohibits the judge from imposing periods of confinement that if added together exceed the periods provided by Subsection (a).

**Sec. 13. New title: DWI COMMUNITY SUPERVISION.** (a)-(i) Make conforming changes.

(j) Requires the judge to require a defendant who is punished under Section 49.09, Penal Code, as a condition of community supervision, to attend and successfully complete, before the end of the defendant's period of driver's license suspension, an educational program for repeat offenders approved by the Texas Commission on Alcohol and Drug Abuse (TCADA). Requires TCADA to adopt rules and to monitor, coordinate, and provide training to persons providing the educational programs. Provides that TCADA is responsible for the administration of the certification of approved educational programs. Authorizes the judge to waive the educational program requirement only if the defendant by a motion in writing shows good cause. Authorizes the judge, in determining good cause, to consider certain items. Requires the judge to set out the finding of good cause in the judgment. Requires the court clerk, if a defendant is required to attend an educational program, to immediately report that fact to the Texas Department of Public Safety for inclusion in the defendant's driving record. Requires the report to include the beginning date of the defendant's community supervision. Requires the defendant, on successful completion of the educational program for repeat offenders, to give notice to the community supervision and corrections department. Requires the community supervision and corrections department to forward the notice to the court clerk. Requires the court clerk to report the date of successful completion of the educational program to the Department of Public Safety for inclusion in the defendant's driving record. Requires the department of Public Safety, if the department does not receive notice that a defendant required to complete an educational program has successfully completed the program for repeat offenders within the period required, to continue the suspension of the defendant's driver's license, permit, or privilege or prohibit the defendant from obtaining a license or

permit.

(k)-(l) Make conforming and nonsubstantive changes.

Sec. 14. New title: **SUBSTANCE ABUSE FELONY PROGRAM.** (a) Authorizes a judge, if a court places a defendant on community supervision, to require as a condition of community supervision that the defendant serve a term of confinement and treatment in a substance abuse treatment facility operated by the Texas Department of Criminal Justice. Requires a term of confinement and treatment imposed under this section to be an indeterminate term of between six months and one year.

(b) Authorizes the judge to impose the condition of community supervision created under this section under certain conditions.

(c) Requires a judge, if the judge requires as a condition of community supervision that the defendant serve a term of confinement and treatment in a substance abuse treatment facility, to require as a condition of community supervision that on release from the facility the defendant participate in a drug or alcohol abuse continuum of care treatment plan.

(d) Requires TCADA to develop the continuum or care treatment plan. Deletes existing text of this section.

Sec. 15. New title: **PROCEDURES RELATING TO STATE JAIL FELONY COMMUNITY SUPERVISION.** (a) Requires the judge, on conviction of a state jail felony, to suspend the imposition of the sentence of confinement and place the defendant on community supervision. Authorizes the judge to suspend in whole or in part the imposition of any fine imposed on conviction.

(b) Provides that the minimum period of community supervision a judge may impose is two years. Provides that the maximum period of community supervision a judge may impose is five years. Authorizes a judge to extend a period of community supervision at any time during the supervision, or if a motion for revocation of community supervision is filed before the supervision ends, before the first anniversary of the expiration of the period of community supervision.

(c) Authorizes a judge to impose any condition of community supervision on a defendant that the judge could impose on a defendant placed on supervision for an offense other than a state jail felony, with an exception.

(d) Authorizes a judge to impose as a condition of community supervision that a defendant submit at the beginning of the period of community supervision to a term of confinement in a state jail felony facility for certain terms. Prohibits a judge from requiring a defendant to submit to both the term of confinement authorized by this subsection and a term of confinement under Section 12. Defines a previous conviction.

(e) Authorizes a judge, if a defendant violates a condition of community supervision imposed on the defendant and after a hearing under Section 21 the judge modifies the defendant's community supervision, to impose any sanction permitted by Section 22, with an exception.

(f) Requires a judge, if a defendant violates a condition of community supervision imposed on the defendant and after a hearing under Section 21 the judge revokes the defendant's community supervision, to dispose of the case in the manner provided by Section 23. Provides that the court retains the jurisdiction over the defendant until the first anniversary of the date the defendant is received unto the custody of a state jail. Authorizes the judge, after a specific time frame and on the judge's own motion, on the motion of the attorney representing the state, or on the motion of the defendant, to suspend further execution of the sentence and place the defendant on community supervision under the conditions of this section.

(g) Requires the facility director of a state jail facility to report regularly to a judge who orders a defendant confined in the facility on the defendant's programmatic progress, conduct, and conformity to the rules of the facility.

(h)(1) Provides that a defendant confined in a state jail felony facility does not earn good time for time served in the facility.

(2) Authorizes a judge to credit against any time a defendant is subsequently required to serve in a state jail felony facility after revocation of community supervision time served by the defendant in a county jail.

(3) Requires a judge to credit against any time a defendant is subsequently required to serve in a state jail felony facility after revocation of community supervision any time served by the defendant in a state jail felony facility after sentencing. Deletes existing text of this section and Section 16.

**Sec. 16. COMMUNITY SERVICE.** (a) Requires a judge to require as a condition of community supervision that the defendant work a specified number of hours at a community service project or projects for an organization or organizations approved by the judge and designated by the department, unless the judge determines and notes on the order placing the defendant on community supervision that certain conditions apply.

(b) Makes conforming and nonsubstantive changes.

(c) Requires the judge, if the judge modifies the defendant's terms of community supervision to include confinement in a state jail felony facility, to order the defendant to continue to work towards fulfillment of his work requirement during his period of confinement.

(d) Provides that a defendant required to perform community service is not a state employee. Deletes text of existing Subsections (c)-(e).

**Sec. 17. New title: CHANGE OF RESIDENCE; LEAVING THE STATE.** (a) Authorizes a change of residence, if for good and sufficient reasons, the defendant desires to change his residence within the state, to be effected by application to the supervising supervision officer, which change shall be subject to the judge's consent and subject to such regulations as the judge may require in the absence of an officer in the locality to which the defendant is transferred.

(b) Requires any defendant who removes himself from the state without permission of the judge to be considered a fugitive from justice and to be subject to extradition as provided by law. Deletes text of existing Section 18.

**Sec. 18. New title: COMMUNITY CORRECTIONS FACILITIES.** (a) Makes conforming changes.

(b) Prohibits a term in a community corrections facility from being more than 24 months if a judge requires as a condition of community supervision that the defendant serve such a term.

(c)-(f) Delete existing Subsection (c), redesignate existing Subsections (d)-(f), and make conforming changes.

(g) Deletes existing Subsection (h) and redesignates existing Subsection (i). Makes conforming changes.

(h) Prohibits a judge that requires as a condition of community supervision that the defendant serve a term in a community corrections facility from imposing a subsequent term in a community corrections facility or jail during the same supervision period that, when added to the terms previously imposed, exceeds 24 months.

(i) Requires the employer of a defendant, if the defendant participating in a program is not required by the judge to deliver the defendant's salary to the restitution center director, to deliver the salary to the director. Requires the director to deposit the salary into a fund to be given to the defendant on release after deducting certain amounts and costs. Deletes existing Sections 20 and 21.

Sec. 19. FEES. Redesignates existing Section 22 and makes conforming changes.

Sec. 20. New title: REDUCTION OR TERMINATION OF COMMUNITY SUPERVISION. Redesignates existing Section 23 and makes conforming and nonsubstantive changes.

Sec. 21. New title: VIOLATION OF COMMUNITY SUPERVISION: DETENTION AND HEARING. Redesignates existing Section 24 and makes conforming and nonsubstantive changes.

Sec. 22. CONTINUATION OR MODIFICATION. (a) Makes conforming and nonsubstantive changes.

(b) Requires the judge, if the judge imposes a sanction under Subsection (a)(4), to also impose a condition requiring the defendant on successful completion of the program to participate in a drug or alcohol abuse continuum of care program.

(c) Authorizes the judge to extend a period of community supervision as often as the judge determines is necessary, but prohibits the period of community supervision in a first, second, or third degree felony case from exceeding 10 years or the period of supervision in a misdemeanor case exceeding three years. Authorizes a court to extend a period of community supervision at any time during the period of supervision or, if a motion for revocation of community supervision is filed before the period of supervision ends, before the first anniversary of the date on which the period of supervision expires.

(d) Redesignates existing Subsection (c), makes conforming changes, and deletes existing Subsection (d).

Sec. 23. REVOCATION. Redesignates existing Section 26 and makes conforming and nonsubstantive changes.

Sec. 24. PILOT SUPERVISION CONTRACTS. Authorizes the Texas Board of Criminal Justice to contract with the commissioners court of Travis County or the Travis County community supervision and corrections department for the confinement of felons under community supervision. Prohibits the commissioners court or the community supervisions and corrections department from entering into a contract unless the commissioners court or department first consults with the community justice council serving the county or the department. Authorizes the commissioners court or the community supervision and corrections department, if the court or the department contracts with the board, to subcontract with a private vendor for the provision of any and all services described in this section. Provides that this section expires September 1, 1995. Deletes existing Section 27.

SECTION 4.02. Makes application of this article prospective.

SECTION 4.021. Amends Section 534.053(c), Health and Safety Code, to require the Texas Department of Mental Health and Mental Retardation, to the extent that resources are available, to ensure that services listed in this section are available for defendants required to submit to mental health treatment under Article 17.032 or Section 5(a) or 11(d), Article 42.12, Code of Criminal Procedure.

SECTION 4.03. Requires, from the effective date of this article until September 1, 1994, a reference in Article 42.12, Code of Criminal Procedure, to an offense to an offense under Chapter 49, Penal Code, to be construed as a reference to the offense and the punishment provisions for the offense as they existed before the effective date of Article 1 of this Act.

SECTION 4.04. (a) Provides that on or after September 1, 1993, a reference to "probation" or "deferred adjudication" means "community supervision." Provides that a defendant who is placed on probation or who receives deferred adjudication on and after September 1, 1993, is considered to have previously been placed on community supervision.

(b) Sets forth the legislature's intent for this article.

SECTION 4.05. (a) Effective date for this article: September 1, 1993, except as provided by Subsection (b).

(b) Effective date for Section 15, Article 42.12, Code of Criminal procedure, as added by this article: September 1, 1994.

## ARTICLE 5

SECTION 5.01. Amends Section 3(d), Article 37.07, Code of Criminal Procedure, Makes conforming changes.

SECTION 5.02. Amends Section 4, Article 37.07, Code of Criminal Procedure, to provide that, if a defendant is sentenced to serve a term of imprisonment, he will not become eligible for parole until the actual time served equals one-half, rather than one-fourth, of the sentence or 30, rather than 15, years, whichever is less, without consideration of any good conduct time earned. Provides that if the defendant is sentenced to a term of less than four, rather than six, years, he must serve at least two years before he is eligible for parole.

SECTION 5.03. Amends Chapter 42, Code of Criminal Procedure, by amending Articles 42.01-42.036, 42.08, and 42.09 and adding Articles 42.023 and 42.20, as follows:

Art. 42.01. JUDGMENT. Provides that a judgment should reflect, in the event that a presentence investigation is required, a statement that the presentence investigation was done according to the applicable provision. Makes conforming changes. Deletes existing Article 42.011.

Art. 42.02. Makes conforming changes.

Art. 42.023. JUDGE MAY CONSIDER ALTERNATIVE SENTENCING. Authorizes the judge, before pronouncing sentence on a defendant convicted of a criminal offense, to consider whether the defendant should be committed for care and treatment under Section 462.081, Health and Safety Code.

Art. 42.03. PRONOUNCING SENTENCE; TIME; CREDIT FOR TIME SPENT IN JAIL BETWEEN ARREST AND SENTENCE OR PENDING APPEAL. Secs. 1-4. Make conforming and nonsubstantive changes. Deletes existing Sections 7-8.

Art. 42.031. WORK RELEASE PROGRAM. Secs. 1 and 2. Make conforming changes.

Sec. 3. (b) Authorizes the sheriff, if the sheriff determines that the defendant is conducting himself in a manner that is dangerous to inmates in the county jail or to society as a whole, to remove the defendant from participation in the program pending a hearing before the sentencing court. Authorizes the court, if the court determines that the sheriff's assessment of the defendant's conduct is correct, to terminate the defendant's participation in the program and order the defendant to the term of imprisonment that the defendant would have received had he not entered the program. Requires the court, if the court determines that the sheriff's assessment is incorrect, to order the sheriff to readmit the defendant to the program. Requires the defendant to receive as credit toward his sentence any time served as a participant in the program. Deletes existing text of this subsection.

Arts. 42.032-42.033. Make conforming and nonsubstantive changes.

Art. 42.034. Makes conforming changes and deletes existing Subsection (c).

Art. 42.035. New title: ELECTRONIC MONITORING; HOUSE ARREST. (a) Makes conforming changes.

(b) Authorizes a judge, at the time of the pronouncement of a sentence of confinement or at any time while the defendant is serving the sentence, on the judge's own motion or on the written motion of the defendant, to permit the defendant to serve the sentence under house arrest. Authorizes the judge to require bail of the defendant to ensure the faithful performance of the sentence.

(c) Authorizes the court to require the defendant to pay the community supervision and corrections department or the county any reasonable cost incurred because of the defendant's participation in the house arrest program.

(d) Redesignates existing Subsection (b) and makes conforming changes.

Art. 42.036. COMMUNITY SERVICE. (a)-(d) Make conforming changes.

(e) Prohibits a court from ordering a defendant who is unemployed to perform more than 32 hours per week of community service under this article, but authorizes the court to direct the defendant to use the remaining hours of the week to seek employment.

(f) Makes conforming changes. Deletes existing Subsections (g) and (h).

Art. 42.08. Makes conforming changes.

Art. 42.09. New title: COMMENCEMENT OF SENTENCE; STATUS DURING APPEAL; PEN PACKET. Secs. 1-7. Make conforming and nonsubstantive changes.

Sec. 8. (b) Requires the director to certify under the seal of the institutional division the documents received under Subsections (a) and (c) of this section. Provides that a document certified under this subsection is self-authenticated for the purposes of Rules 901 and 902, Texas Rules of Criminal Evidence.

(c)-(h) Make conforming and nonsubstantive changes.

(i) Authorizes a county to deliver the required documents to the institutional division by electronic means. Defines "electronic means."

Art. 42.20. IMMUNITIES. (a) Provides that an individual listed in Subsection (c) of this article and the governmental entity that the individual serves as an officer or employee are not liable for damages arising from an act or failure to act by the individual or governmental entity in connection with a community service program or work program established under this chapter if the act or failure to act was performed pursuant to a court order or was otherwise performed in an official capacity, and was not performed with conscious indifference for the safety of others.

(b) Provides that Chapter 101, Civil Practice and Remedies Code, does not apply to a claim based on an act or a failure to act of an individual listed in Subsection (c) or a governmental entity the officer serves as an officer or employee if the act or failure to act is in connection with a program described by Subsection (a).

(c) Sets forth the persons to which this article applies.

SECTION 5.04. Amends Chapter 43, Code of Criminal Procedure, by amending Articles 43.01, 43.03, 43.09, 43.10, 43.101, 43.11, and 43.12, and adding Article 43.131, as follows:

Art. 43.01. DISCHARGING JUDGMENT FOR FINE. Requires a defendant, when the

sentence against the defendant is for fine and costs, to be discharged from the fine and costs when the defendant has discharged the amount of fines and costs in any other manner permitted by this code.

Art. 43.03. PAYMENT OF FINE. (a) Makes conforming and nonsubstantive changes.

(b) Provides that if a court orders a term of confinement for default in payment of fines or costs at a time during which a defendant is serving another term of confinement for default or is serving a term of confinement for conviction of an offense, the term of confinement for default runs concurrently with the other term of confinement, unless the court orders the terms to run consecutively under Article 42.08.

(c) Makes conforming changes.

(d) Prohibits a court from ordering a defendant confined under Subsection (a) unless the court at a hearing determines that the defendant is not indigent or determines that the defendant willfully refused to pay or failed to make sufficient bona fide efforts legally to acquire the resources to pay and enters that determination in writing in the court docket, and determines that no alternative method of discharging fines and costs is appropriate for the defendant.

Art. 43.09. FINE DISCHARGED. (a)-(k) Make conforming and nonsubstantive changes. Deletes existing Subsection (l).

Art. 43.10. New title: MANUAL LABOR. Deletes existing Subsection (b).

Art. 43.101. New title: VOLUNTARY WORK. (a) Authorizes a defendant confined in a county jail after conviction of a felony and awaiting transfer to the institutional division to volunteer to participate in any work program operated by the sheriff that uses the labor of convicted felons.

(b) Makes conforming changes.

(c) Provides that a defendant participating in a work program is not a state employee.

Art. 43.11. New title: AUTHORITY FOR CONFINEMENT. Makes conforming changes.

Art. 43.12. New title: CAPIAS FOR CONFINEMENT. Makes conforming and nonsubstantive changes.

Art. 43.131. IMMUNITIES. (a) Provides that an individual listed in Subsection (c) and the governmental entity that the individual serves as an officer or employee are not liable for damages arising from an act or failure to act by the individual or governmental entity in connection with a community service program or work program established under this chapter if the act or failure to act was performed pursuant to a court order or was otherwise performed in an official capacity, and was not performed with conscious indifference for the safety of others.

(b) Provides that Chapter 101, Civil Practice and Remedies Code, does not apply to a claim based on an act or a failure to act of an individual listed in Subsection (c) or a governmental entity the officer serves as an officer or employee if the act or failure to act is in connection with a program described by Subsection (a).

(c) Sets forth the persons to whom this article applies.

SECTION 5.05. Amends Section 3(a), Article 37.07, Code of Criminal Procedure, as follows:

(a) Includes among relevant evidence that may be offered to the court an opinion regarding the defendant's character, the circumstances of the offense for which he is being tried, and any other evidence of an extraneous crime or bad act that is shown beyond a reasonable

doubt by evidence to have been committed by the defendant or for which he could be held criminally responsible, regardless of whether he has previously been charged with or finally convicted of the crime or act. Makes conforming changes.

**SECTION 5.06.** Amends Section 3, Article 37.07, Code of Criminal Procedure, by adding Subsection (g), as follows:

(g) Requires notice of intent to introduce evidence, on request of the defendant, to be given in the same manner required by Rule 404(b), Texas Rules of Criminal Evidence. Provides that if the attorney representing the state intends to introduce an extraneous crime or bad act that has not resulted in a final conviction in a court of record or a probated or suspended sentence, notice of that intent is reasonable only if the notice includes the date on which and county in which the alleged crime or bad act occurred and the name of the alleged victim of the crime or bad act. Provides that the requirement that the attorney representing the state give notice applies only if the defendant makes a timely request to the attorney representing the state for notice.

**SECTION 5.07.** Amends Article 45.54, Code of Criminal Procedure, as follows:

**Art. 45.54. SUSPENSION OF SENTENCE AND DEFERRAL OF FINAL DISPOSITION.**

(2) Requires the justice, during the deferral period, to require the defendant to successfully complete a driving course, if the offense alleged is an offense involving the operation of a motor vehicle and the defendant has completed an approved driving safety course within the preceding 12 months, or is a first-time offender who elects deferred adjudication.

(3)(e) Authorizes the justice, during the deferral period, to require the defendant to successfully complete a Central Education Agency approved driving safety course under certain conditions.

**SECTION 5.08.** Requires, from the effective date of this article until September 1, 1994, a reference in an article of the Code of Criminal Procedure, to an offense under Chapter 49, Penal Code, to be construed as a reference to the offense and the punishment provision for the offense as they existed before the effective date of Article 1 of this Act.

**SECTION 5.09.** Makes application of this article prospective.

**SECTION 5.10.** Effective date for this article: September 1, 1993.

## ARTICLE 6

**SECTION 6.01.** Amends Section 8(b), Article 42.18, Code of Criminal Procedure, to make conforming changes.

**SECTION 6.02.** Amends Section 8(c), Article 42.18, Code of Criminal Procedure, to remove a first degree felony under Section 22.02, Penal Code, from those items for which a prisoner is prohibited from being released on mandatory supervision, and makes conforming changes.

**SECTION 6.03.** Amends Section 7, Article 42.18, Code of Criminal Procedure, by amending Subsection (e) and adding Subsection (g), as follows:

(e) Provides an exception.

(g) Authorizes the board to grant parole to a person convicted of a capital felony only on a two-thirds vote of the entire membership of the board.

**SECTION 6.04.** Makes application of this article prospective.

**SECTION 6.05.** Effective date for this article: September 1, 1993.

## ARTICLE 7

SECTION 7.01. (a) Amends Chapter 48, Code of Criminal Procedure, by adding Article 48.05, as follows:

**Art. 48.05. RESTORATION OF CIVIL RIGHTS.** (a) Authorizes an individual convicted of a federal offense other than an offense involving violence or the threat of violence or involving drugs or firearms, except as provided by Subsection (b), to submit an application for restoration of any civil rights forfeited under the laws of this state as a result of the conviction.

(b) Prohibits an individual from applying for restoration of civil rights under this article unless certain conditions are met.

(c) Sets forth certain information that an application for restoration of civil rights must contain.

(d) Sets forth certain entities to whom the applicant must submit the application.

(e) Requires a sheriff to review an application and recommend to the Board of Pardons and Paroles (board) whether the individual's civil rights should be restored, if the application is submitted to the sheriff. Authorizes the board to take certain actions if the sheriff recommends restoration of the individual's civil rights.

(f) Authorizes an individual to apply directly to the board, if the sheriff does not recommend the restoration of the individual's civil rights.

(g) Requires the board to review an application and recommend to the governor as to whether the individual's civil rights should be restored, if the application is submitted directly to the board.

(h) Authorizes the board to require or obtain additional information as necessary to perform a review under Subsection (e)(2) or Subsection (g) of this article.

(i) Sets forth certain actions the governor is authorized to take on receipt from the board of a recommendation to restore the civil rights of an individual.

(j) Prohibits an individual from filing another application under this article before the first anniversary of the date of the denial, if an application under this article is denied by the board or the governor.

(k) Provides that a restoration of civil rights under this article is a form of pardon that restores all civil rights under the laws of this state that an individual forfeits as a result of the individual's conviction of a federal offense, except as specifically provided in the certificate of restoration.

(b) Makes application of this section retroactive.

SECTION 7.02. (a) Amends Article 55.01, Code of Criminal Procedure, as follows:

**Art. 55.01. RIGHT TO EXPUNCTION.** (a) Creates this subsection from existing text. Provides that a person who has been arrested for commission of either a felony or misdemeanor is entitled to have all records and files relating to the arrest expunged if the person is tried for the offense for which the person was arrested and is acquitted by the trial court, or convicted and subsequently pardoned, or if certain conditions exist.

(b) Authorizes a district court to expunge all records and files relating to the arrest of a person who has been arrested for commission of a felony or misdemeanor under the procedure established under Article 55.02 if the person is tried for the offense for

which the person was arrested, convicted of the offense, and acquitted by the court of criminal appeals.

(b) Makes application of this section retroactive.

**SECTION 7.03.** Amends Chapter 28, Code of Criminal Procedure, by adding Article 38.36, as follows:

**Art. 38.36. EVIDENCE IN PROSECUTIONS FOR MURDER.** (a) Requires the state or the defendant, in all prosecutions for murder, to be permitted to offer testimony as to all the relevant facts and circumstances surrounding the killing and the previous relationship existing between the accused and the deceased, together with all relevant facts and circumstances going to show the condition of the mind of the accused at the time of the offense.

(b) Requires the defendant, in a prosecution for murder, if the defendant raises as a defense a justification provided by Section 9.31, 9.32, or 9.33, Penal Code, the defendant, in order to establish the defendant's reasonable belief that use of force or deadly force was immediately necessary, to be permitted to offer certain evidence or testimony.

**SECTION 7.04.** Repealer: Section 14, Chapter 652, Acts of the 72nd Legislature, Regular Session, 1991.

**SECTION 7.05.** (a) Effective date for this article: September 1, 1993, except as provided by Subsection (b).

(b) Effective date for Section 7.03: September 1, 1994.

#### ARTICLE 8

**SECTION 8.01.** Amends Article 5.05, Code of Criminal Procedure, by amending Subsection (a) and adding Subsection (e), as follows:

(a) Makes conforming changes.

(e) Requires a peace officer who makes a report under Subsection (a) to provide information concerning the incident or disturbance to the bureau of identification and records of the Department of Public Safety for its recordkeeping function under Section 411.042, Government Code. Requires the bureau to prescribe the form and nature of the information required to be reported to the bureau by this article.

**SECTION 8.02.** Effective date for this article: September 1, 1993.

#### ARTICLE 9

**SECTION 9.01.** Amends Chapter 42, Code of Criminal Procedure, by adding Article 42.013, as follows:

**Art. 42.013. FINDING OF FAMILY VIOLENCE.** Requires the court, in the trial of an offense under Title 5, Penal Code, if the court determines that the offense involved family violence, to make an affirmative finding of that fact and enter the affirmative finding in the judgment of the case.

**SECTION 9.02.** Amends Article 42.01, Code of Criminal Procedure, by adding Section 5, as follows:

**Sec. 5.** Provides that in addition to the information described by Section 1 of this article, the judgment should reflect affirmative findings entered pursuant to Article 42.013 of this code.

**SECTION 9.03.** Effective date of this article: September 1, 1993.

## ARTICLE 10

SECTION 10.01. Amends Article 24.03, Code of Criminal Procedure, as follows:

Art. 24.03. SUBPOENA AND APPLICATION THEREFOR. (a) Creates this subsection from existing text.

(b) Requires the clerk, if the defendant is a member of a combination, to issue for each witness a subpoena that does not include a list of the names of all other witnesses for the state or the defendant.

SECTION 10.02. Effective date for this article: September 1, 1993.

## ARTICLE 11

SECTION 11.01. Amends Chapter 40, Code of Criminal Procedure, by adding Article 40.001, as follows:

Art. 40.001. NEW TRIAL ON MATERIAL EVIDENCE. Requires a new trial to be granted an accused where the material evidence favorable to the accused has been discovered since trial.

SECTION 11.02. Provides that under the terms of Section 22.108(b), Government Code, Rule 30(b)(6), Texas Rules of Appellate Procedure, is disapproved.

SECTION 11.03. Provides that the rulemaking authority granted to the court of criminal appeals under Section 22.108, Government Code, is withdrawn with respect to rules of appellate procedure relating to granting a new trial on the grounds of evidence other than material evidence discovered after the trial of an offense.

SECTION 11.04. Makes application of this article prospective.

SECTION 11.05. Effective date for this article: September 1, 1993.

## ARTICLE 12

SECTION 12.01. Amends Article 38.07, Code of Criminal Procedure, as follows:

Art. 38.07. TESTIMONY IN CORROBORATION OF VICTIM OF SEXUAL OFFENSE. Provides that a conviction under Chapter 21, Section 22.011, or Section 22.021, Penal Code, is supportable on the uncorroborated testimony of the victim of the sexual offense if the victim informed any person, other than the defendant, of the alleged offense within one year, rather than six months, after the date on which the offense is alleged to have occurred. Provides that the requirement that the victim inform another person of an alleged offense does not apply if the victim was younger than 18, rather than 14, years of age at the time of the alleged offense.

SECTION 12.02. Effective date for this article: September 1, 1993.

## ARTICLE 13

SECTION 13.01. Provides that this Act only takes effect if S.B. 532, 73rd Legislature, Regular Session, 1993, takes effect.

SECTION 13.02. (a) Provides that any other amendment to the Penal Code or to another provision amended by this Act by the 73rd Legislature is effective only until September 1, 1994.

(b) Provides that an offense is committed before September 1, 1994, if all elements of the offense occur before that date.

(c) Provides that if H.B. 354, 73rd Legislature, Regular Session, 1993, is enacted and becomes law, the amendments made to the Penal Code by that Act continue in effect on and after September 1, 1994. Provides that if S.B. 456, 73rd Legislature, Regular Session, 1993, is enacted and becomes law, the amendments made to the Penal Code by that Act continue in effect on and after September 1, 1994.

SECTION 13.03. Emergency clause.